

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

**(Amended After Comments)**

401 KAR 5:006. Wastewater planning requirements for regional planning agencies ~~[areas]~~.

RELATES TO: KRS 67, 67A, 74, 76, 96, 108, 220, 224.10-100, 224.70-100, 224.70-110, 424, [224.73, 224A.040, 224A.050, 224A.055, 224A.070, 224A.080,] 33 U.S.C. 1251-1387 ~~[et seq.]~~

STATUTORY AUTHORITY: KRS 224.10-100, ~~[224.16-050,]~~ 224.70-100, 224.70-110, ~~[224A.111, 224A.112, 224A.113,]~~ 40 C.F.R. ~~[25.4, Parts 35,]~~ 130, 33 U.S.C. ~~[1281, 1285,]~~ 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Energy and Environment ~~[Environmental and Public Protection]~~ Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. ~~[The Clean Water Act, 33 USC 1281 et seq. and more specifically,]~~ 33 U.S.C. ~~[USC]~~ 1313(e)~~[,]~~ requires each state to establish and maintain ~~[the implementation of]~~ a continuing planning process ~~[by governmental bodies]~~ to provide for the control of water pollution. 33 U.S.C. ~~[USC]~~ 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization ~~[organizations]~~ within each area ~~[the areas]~~ to develop a wastewater treatment management plan applicable to all wastewater ~~[wastewaters]~~ generated within an area. ~~[40 CFR~~

~~Part 130 specifies further detail for compliance with Section 208 of the Clean Water Act, including the requirement that the state establish and maintain a continuing planning process that includes the process for incorporating elements of any applicable areawide wastewater treatment management plans under Section 208, applicable basin plans under Section 209 of the Clean Water Act, and a process for updating and maintaining water quality management plans, including schedules for revision.] 40 C.F.R. [CFR] 130.6[(e) also] requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility [implements the required] planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas [for the Commonwealth of Kentucky in order to conform with federal requirements and provides for the preparation of wastewater treatment management plans by governmental agencies for point sources of pollution].~~

Section 1. Applicability.

(1) A governmental entity, such as a city, county, or other public body created by KRS 67, 67A, 74, 76, 96, 108, or 220, may apply for designation as a regional planning agency. An applicant for designation as a regional planning agency shall submit [by submitting] a regional facility plan to the cabinet.

(2) The cabinet shall designate a regional planning agency in accordance with 33 U.S.C. 1288(a)(2) and (3).

(3) The cabinet shall de-designate a regional planning agency if:

(a) The regional planning agency requests de-designation;

1       **(b) The regional planning agency fails to meet its planning obligations as specified in a grant**  
2 **agreement, contract, or memorandum of understanding; or**

3       **(c) The regional planning agency no longer has the resources or the commitment to continue**  
4 **water quality planning activities within the designated boundary.**

5       **(4) If a regional planning agency is de-designated, the cabinet shall assume responsibility for**  
6 **continued water quality planning and oversight of implementation of planning activities within**  
7 **the regional planning area.**

8       **(5) The cabinet shall not designate an entity as a regional planning agency if that entity does**  
9 **not have authority to meet the requirements established in 33 U.S.C. 1288(c)(2)(A) through (I).**

10 ~~[This administrative regulation shall govern the regional planning process for the development of~~  
11 ~~water quality management plans to control point sources of pollution in given areas throughout~~  
12 ~~the Commonwealth. This administrative regulation establishes the process by which regional~~  
13 ~~planning agencies and the Commonwealth shall comply with Sections 201, 205, 208, and 303(e)~~  
14 ~~of the Clean Water Act to provide planning for wastewater control in particular areas for point~~  
15 ~~sources of pollution.]~~

16       Section 2. **Requirement to Submit a Regional Facility Plan** ~~[Requirements]~~.

17       **(1) An applicant for designation as a new regional planning agency shall submit a regional**  
18 **facility plan to the cabinet.**

19 ~~[No new regional facility shall be constructed, no average daily design capacity of an existing~~  
20 ~~regional facility shall be expanded by more than thirty (30) percent, or no existing regional~~  
21 ~~sewage collection system shall expand its equivalent population served by more than thirty (30)~~  
22 ~~percent of the existing population, without the regional planning agency submitting a regional~~

1 facility plan and the cabinet approving the plan. All regional facility plans shall be prepared by a  
2 registered professional engineer.]

3 (2) An existing [A] regional planning agency shall submit a regional facility plan if [~~or~~  
4 ~~regional facility plan update when the following occurs~~]:

5 (a) A new wastewater treatment [regional] facility is proposed for construction [~~to be~~  
6 ~~constructed~~] within the planning area;

7 (b) An existing regional planning agency proposes to expand the average daily design  
8 capacity of an existing wastewater treatment [regional] facility [~~is proposed to be expanded~~] by  
9 more than thirty (30) percent; or

10 (c) The equivalent population served by an existing wastewater [regional sewage] collection  
11 system or a system with a Kentucky Inter-System Operating Permit is proposed for expansion [~~to~~  
12 ~~be expanded~~] by more than thirty (30) percent of the [existing] population served in the  
13 previously approved regional facility plan. [;

14 (d) ~~A regional facility or other governmental agency applies for a grant from the U.S. EPA or~~  
15 ~~applies for a loan from the federally assisted wastewater revolving fund pursuant to the~~  
16 ~~requirements of 40 CFR Part 35 and 200 KAR Chapter 17. A plan of study shall be submitted to~~  
17 ~~the cabinet for the project to be eligible to be placed on the project priority list and receive~~  
18 ~~priority points;~~

19 (e) ~~A regional planning agency considers the submission of the plan to be in the best interest~~  
20 ~~of the public and the environment; or~~

21 (f) ~~It has been twenty (20) years since the regional planning agency or its successor has~~  
22 ~~submitted a regional facility plan.]~~

23 (3) A regional planning agency shall request a pre-planning meeting with the cabinet before

1 submitting a regional facility plan.

2 (4) Two (2) paper copies and one (1) electronic copy of the regional facility plan shall be  
3 submitted to the cabinet. One (1) submitted copy shall be certified in a manner that meets  
4 the requirements established in 201 KAR 18:104.

5 Section 3. ~~[Regional Planning Agencies. (1) Governmental entities such as cities, counties,~~  
6 ~~and other public bodies that are created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220 may~~  
7 ~~apply to the cabinet to become a regional planning agency, if they have not already been~~  
8 ~~designated as a regional planning agency, by submitting a regional facility plan. The cabinet may~~  
9 ~~designate the entity as a regional planning agency if it finds that the proposed area is not served~~  
10 ~~by another regional planning agency; the development of this agency would be in the best~~  
11 ~~interest of the public and the environment; or the agency has the legal, institutional, managerial,~~  
12 ~~and financial capability, and specific activities necessary to carry out its responsibilities in~~  
13 ~~accordance with Section 208(c)(2)(A) through (I) of the CWA.~~

14 ~~(2) Designation. Regional planning agencies may be designated by the cabinet in accordance~~  
15 ~~with Section 208(a)(2) and (3) of the CWA and this administrative regulation. Designations and~~  
16 ~~de-designations shall be subject to approval by the U.S. EPA in accordance with Section~~  
17 ~~208(a)(7) of the CWA.~~

18 ~~(3) De designation. The cabinet may modify or withdraw the planning designation of a~~  
19 ~~regional planning agency if:~~

20 ~~(a) The regional planning agency requests the cancellation;~~

21 ~~(b) The regional planning agency fails to meet its planning requirements as specified in grant~~  
22 ~~or loan agreements, contracts, or memoranda of understanding; or~~

23 ~~(c) The regional planning agency no longer has the resources or the commitment to continue~~

~~water quality planning activities within the designated boundaries.~~

~~(4) Impact of de-designation. When a regional planning agency's designation has been withdrawn, the cabinet shall assume direct responsibility for continued water quality planning and oversight of implementation of planning activities within the area.~~

Section 4.] Contents of a Regional Facility Plan.

(1) A [The] regional facility plan shall include adequate ~~[the necessary]~~ information to allow for an environmental assessment of the [primary] projects proposed in the regional facility plan that are ready to begin construction within the first twenty-four (24) months of the planning period and to assure that a ~~[the most]~~ cost-effective and environmentally sound means of achieving the established water quality goals can be implemented.

(2) A regional facility plan shall be consistent with the Regional Facility Plan Guidance and shall include:

(a) A regional facility plan summary;

(b) A statement of the purpose of and need for the regional facility plan, including documentation of existing water quality or public health problems related to wastewater in the planning area;

(c) Physical characteristics of the planning area;

(d) A description of the socioeconomic characteristics of the planning area;

(e) A description of the existing environment in the planning area;

(f) [These plans shall contain the following information:

~~(1) Maps showing the planning area. In the determination of a planning area, appropriate attention shall be given to include the entire area where cost savings, regionalization, other management advantages, or environmental gains may result from interconnection of individual~~

~~sewage facilities or collective management of the systems. At least one (1) original seven and one half (7 1/2) minute USGS topographic map shall be submitted showing the planning area. Computer generated USGS data compatible with the cabinet's computer system may be substituted for the USGS map.~~

~~(2)]A description of the existing wastewater collection and treatment facilities in the planning area;~~

~~(g) A forecast of flows and waste loads for the planning area;~~

~~(h) [regional facilities, including physical condition, hydraulic and organic design capacities, characteristics of wastewater, ability to meet permit limits, method of sludge handling and disposal, existing flows including average and peak flows, a waste load allocation for the proposed project, inflow and infiltration problems including location and frequency of bypasses or overflows, combined sewers if any, the collection system including location of pump stations and their capacities, and operation and maintenance problems. The location and identification of any other sewage treatment plants located in, or serving a part of, the planning area shall also be shown.~~

~~(3) A description of the planning area characteristics, including the location of wetlands, delineation of the 100 year floodplain area, topography, groundwater, surface streams, geology, soils with specific mention of suitability or unsuitability of soils, and topography for on-site sewage disposal systems.~~

~~(4) If there is a proposed project, a discussion of the need for the project including current compliance status, applicable permit limits, and if proposed sewers are involved, documentation as to why on-site systems are not acceptable. Discussions and documentation of any water quality or public health problems in the area shall be included. The applicant shall also describe~~

1 ~~any type of state or federal enforcement actions that may exist against any wastewater treatment~~  
2 ~~plant within the area.~~

3 ~~(5) A discussion of the current and projected in the planning area including existing~~  
4 ~~population in the current service area, twenty (20) year projected population in the current~~  
5 ~~service area, existing population in unsewered parts of the planning area, and twenty (20) year~~  
6 ~~projected population in the unsewered parts of the planning area. Current and projected industrial~~  
7 ~~and commercial users of the system shall be included. When appropriate, those areas of the~~  
8 ~~planning area not currently sewerred should be divided into three (3) time frames: present to two~~  
9 ~~(2) years, three (3) to ten (10) years, and eleven (11) to twenty (20) years. The current and~~  
10 ~~projected populations shall be shown for each area on the planning area map. If available, a local~~  
11 ~~planning and zoning land use map shall be included. The basis for the projected population~~  
12 ~~change shall be identified.~~

13 ~~(6)]~~A detailed evaluation of alternatives, along with a twenty (20) year present worth cost  
14 analysis for each alternative. All wastewater management alternatives considered, including no  
15 action, and the basis for the engineering judgment ~~[judgement]~~ for selection of the alternatives  
16 chosen for detailed evaluation, shall be included. Sufficient detail shall be provided to allow for a  
17 thorough cost analysis to be conducted. Nonmonetary effectiveness criteria shall be limited to  
18 implementability, environmental impact, engineering evaluation, public support, and  
19 regionalization. The alternatives shall reflect a comprehensive regional plan for the planning area  
20 and shall minimize the number of point source discharges. Intended sources of funding shall be  
21 listed along with estimated user fees; [-]

22 (i) Cross-cutter correspondence and mitigation;

23 (j) An evaluation of the recommended regional facility plan; and



1 ~~(k) [(7) In addition to the cost for the current project being proposed, cost estimates shall be~~  
2 ~~given for the entire twenty (20) year planning period. Cost estimates shall be provided for each~~  
3 ~~time frame identified in subsection (5) of this section and shall be broken down by the following~~  
4 ~~categories: secondary wastewater treatment, advanced wastewater treatment, inflow and~~  
5 ~~infiltration correction, major sewer rehabilitation, new collector sewers, interceptor sewers,~~  
6 ~~combined sewer overflow corrections, and storm water pollution corrections.]~~

7 (8)] Documentation of public participation.

8 1. A copy of the advertisement for the public hearing required by Section 5 of this  
9 administrative regulation, ~~and~~ a copy of the minutes of the public hearing, and ~~any~~ written  
10 comments and responses shall be submitted as part of the regional facility plan.

11 2. If more than one (1) public hearing is ~~was~~ held or if there are ~~were~~ public meetings or  
12 public notices about ~~of~~ the project, a copy ~~copies~~ of all documentation of these events shall be  
13 submitted as part of the regional facility plan.

14 3. At the required public hearing, the scope of the project, cost of the project, alternatives  
15 considered, and estimated user charges and hook-up fees shall be discussed.

16 (3) The items required in subsection(2)(f) through (h) of this section shall be prepared by, or  
17 under the direct supervision of, a professional engineer licensed in Kentucky.

18 Section 4. Requirement to Submit an Asset Inventory Report.

19 (1) An asset inventory report shall be submitted to the cabinet if:

20 (a) It has been ten (10) years since the regional planning agency submitted a regional facility  
21 plan or asset inventory report; and

22 (b) Section 2(2) of this administrative regulation does not require the regional planning  
23 agency to submit a regional facility plan.

(2) The regional planning agency shall submit the following information on the Asset Inventory Report Form:

(a) Wastewater facility data;

(b) Revenue and expenses;

(c) Asset inventory;

(d) Project prioritization;

(e) Funding plan;

(f) Copies of supporting documentation; and

(g) Certification statement from a designated official.

(3) The cabinet shall issue ~~[an assessment report]~~ to the regional planning agency **an assessment report** that provides recommendations related to facility planning, operation, and management that ensure continuing compliance and protection of surface water and groundwater.

(4) The cabinet shall **provide public notice of** ~~[publish]~~ its assessment of the Asset Inventory Report on its Web site for thirty (30) days.

(5) **The public shall have an opportunity to comment on the cabinet's assessment of the asset inventory report and the period for comment shall remain open for thirty (30) days from the date of the first publication of the report.**

(6)(a) **If it has been ten (10) years or more since the approval of a regional planning agency's regional facility plan, the regional planning agency shall submit an asset inventory report to the cabinet by July 1, 2012.**

(b) **A subsequent asset inventory report shall be due to the cabinet ten (10) years from the approval date of the regional facility plan or asset inventory report, whichever is most**

1 recent.

2 Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to  
3 final agency action on [the approval of] the regional facility plan [~~or updates to the plan~~], the  
4 regional [facility] planning agency shall publish [~~give public~~] notice of its draft plan and shall  
5 hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing [~~on~~  
6 ~~the draft plan~~] shall be provided [~~given~~] pursuant to KRS [~~Chapter~~] 424.

7 (2) A [AH] public notice [~~notices~~] issued pursuant to [~~under~~] this administrative regulation  
8 shall contain the following information:

9 (a) The name and address of the regional planning agency that is proposing [~~which drafted~~]  
10 the plan;

11 (b) A brief description of the contents of the draft plan and the area to be served;

12 (c) The name, address, and telephone number of persons from whom interested persons may  
13 obtain further information and a copy [~~including copies~~] of the draft regional facility plan;

14 (d) A brief description of the [~~procedures for the~~] public's right to comment on the draft  
15 regional facility plan and the procedures for commenting [~~required by this administrative~~  
16 ~~regulation~~];

17 (e) [~~A reference to~~] The date of [~~any~~] previous public notices relating to the draft regional  
18 facility plan;

19 (f) The date, time, and place of the public hearing on the draft plan; and

20 (g) A brief description of the nature and purpose of the hearing.

21 (3) The planning agency shall provide a copy of the public notice and the draft plan to the  
22 cabinet for publication on its Web site at least **thirty (30) days** [~~two (2) weeks~~] prior to the  
23 public hearing.

(4) The public shall have ~~[be given]~~ an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. The regional planning agency may extend the public comment period, on request, if it believes additional public input is necessary. ~~[Commentors may request longer comment periods, which may be granted by the regional planning agency, if appropriate.]~~

(5) A ~~[(4) Any]~~ person may submit written or oral comments ~~[statements]~~ and data to the regional planning agency concerning the draft regional facility plan. **In the interest of time and efficiency, [Reasonable]** limits may be set up on the time **allowed** ~~[limit]~~ for oral statements and the submission of statements in writing may be required.

(6) ~~[(5)]~~ All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Regional Facility Plan Review. ~~[Action on the Plan]~~. (1) The cabinet shall prepare an environmental assessment report summarizing ~~[will be written by the cabinet which summarizes]~~ the regional facility plan.

(a) The cabinet shall ~~[will]~~ submit the environmental assessment report to the State Clearinghouse for review and comments to identify potentially adverse impacts resulting from the proposed [primary] projects that are ready to begin construction within the first twenty-four (24) months of the planning period ~~[proposed]~~.

(b) The cabinet shall provide public notice of [publish] the environmental assessment

1 report on its Web site for thirty (30) days.

2 (c) The public shall have an opportunity to comment on the environmental assessment  
3 report, and the period of comment shall remain open for thirty (30) days from the date of  
4 the first publication of the report.

5 (d) The cabinet may identify measures in the environmental assessment report to avoid,  
6 minimize, or reduce potentially adverse environmental impacts. [Mitigative measures may be  
7 required to address any negative comments as a result of this review.]

8 (2) The cabinet shall issue a determination to approve or deny a regional facility plan within  
9 120 calendar days of receipt of a complete regional facility plan.

10 (3) If the [cabinet finds that the] regional facility plan is [has been properly] submitted  
11 consistent with the requirements of this administrative regulation and addresses water quality or  
12 public health problems related to wastewater [and is in the best interest of the environment and  
13 the public], the cabinet shall [will] approve the regional facility plan.

14 [Section 7. Consistency with Plans. Construction grant, loan, and]

15 (4) KPDES and facility construction permit decisions shall be made in accordance with  
16 [certified and] approved [water quality management plans, including] regional facility plans, as  
17 established [described] in 40 CFR 130.12(a) and (b) [and this administrative regulation].

18 Section 7. Incorporation by Reference.

19 (1) The following material is incorporated by reference:

20 (a) “Regional Facility Plan Guidance”, February 2011 [December 2010]; and

21 (b) “Asset Inventory Report Form”, February 2011 [December 2010].

22 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,  
23 at Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday,

1 8:00 a.m. to 4:30 p.m.

2 (3) This material may also be obtained through the Division of Water's Web site at  
3 <http://water.ky.gov>.

4 ~~[Section 8. Nonpoint Source Controls. Regional planning agencies may implement plans for~~  
5 ~~nonpoint source controls, other than plans for agricultural nonpoint source controls, in their~~  
6 ~~designated areas. Regional planning agencies may develop plans for agricultural nonpoint source~~  
7 ~~controls in their areas, if the plans are developed in coordination with the Agriculture Water~~  
8 ~~Quality Authority, established pursuant to KRS 224.71. These plans may be included in the~~  
9 ~~comprehensive water quality management plan that may include the regional facility plan.]~~

401 KAR 5:006 “Wastewater planning requirements for regional planning agencies” (AAC)  
approved for promulgation:

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Date

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Leonard K. Peters, Secretary  
Energy and Environment Cabinet

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:006

Contact Person: Sandy Gruzesky, Director

**(1) Provide a brief summary of:**

- (a) What this administrative regulation does:** This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.
- (b) The necessity of this administrative regulation:** KRS 224.10-100 requires the cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and single representative organizations within the each area to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** This administrative regulation requires regional planning agencies to perform facility planning for point sources of pollution in designated planning areas for maintaining, improving and protecting water quality. Also the facility planning process is a key element of the comprehensive plan for the management of water resources, as mandated by federal law and KRS 224.10-100.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation serves as an important component of the federally required continuing planning process and comprehensive plans for the management of water resources, as required by KRS 224.10-100.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

- (a) How the amendment will change this existing administrative regulation:** The proposed amendments to this administrative regulation decrease the financial burden to regional planning agencies, clarify language, and strike outdated federal citations. To reduce the costs to regional planning agencies, the regulation no longer requires the entire regional facility plan to be developed by an engineer; only those parts that are engineering work must be developed by professional engineer. The requirement to submit a revised regional facility plan is no longer automatically triggered by an application for federal funding or a twenty-year time lapse. For regional planning agencies that do not otherwise trigger the need to submit a regional facility plan, there is an option to submit an asset inventory report. Additionally, the regulation implements a 120 day review deadline for the Cabinet to approve or deny a regional facility plan. In response to comments, the cabinet clarified the intent of



the regulation and specified public notice and response to comment procedures for the asset inventory report and environmental assessment report. The cabinet also included a provision to post draft facility plans on the cabinet's website for thirty days before a public hearing.

- (b) **The necessity of the amendment to this administrative regulation:** The amendments to this administrative regulation are necessary to make the regional planning process more efficient and effective, and to allow flexibility for regional planning agencies that are experiencing little or no growth.
  - (c) **How the amendment conforms to the content of the authorizing statutes:** This amendment will improve an important component of the federally required continuing planning process for maintaining, improving, and protecting the state's water resources.
  - (d) **How the amendment will assist in the effective administration of the statutes:** The proposed revisions to this administrative regulation incorporate by reference guidance documents, require the cabinet to post the environmental assessment reports online, which adds transparency, and clarify ambiguous language. These amendments will improve the effectiveness and efficiency of the regional facility planning and review process.
- (3) **List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** There are currently 231 regional planning agencies (a governmental entity, such as a city, county, or other public body created by KRS 67, 67A, 74, 76, 96, 108, or 220) that will be affected by this administrative regulation.
- (4) **Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**
- (a) **List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** A regional planning agency will be required to submit a regional facility plan when it is first formed, proposes to construct a new wastewater treatment facility, expands an existing wastewater treatment facility by thirty percent, or proposes to expand the population served by more than thirty percent. If a regional planning agency does not meet one of the triggers for a new regional facility plan, the agency may submit an asset inventory report every ten years.
  - (b) **In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Compliance with the revised administrative regulation will not result in increased costs to a regional planning agency. Regional planning agencies will be able to reduce their planning costs significantly because of the limited role of a professional engineer required in the revised facility plans. Additionally, the amendment to this administrative regulation gives a regional planning agency the option of submitting an asset inventory report, instead of a full regional facility plan. The asset inventory report is an abbreviated planning document that is appropriate for smaller regional planning agencies, or regional planning agencies in areas that are experiencing little or no growth.
  - (c) **As a result of compliance, what benefits will accrue to the entities identified in question (3):** The proposed amendments to this administrative regulation will decrease the financial burden to regional planning agencies. To reduce the costs to regional planning agencies, the regulation no longer requires the entire regional facility plan to be developed by an engineer;

only those parts that are engineering work must be developed by a professional engineer. The requirement to submit a revised regional facility plan is no longer automatically triggered by an application for federal funding or a twenty-year time lapse. For regional planning agencies that do not otherwise trigger the need to submit a regional facility plan, there is an option to submit an asset inventory report. The asset inventory report will give the regional planning agencies a tool to target capital investments toward critical assets and prolong the useful life of their assets. Additionally, the regulation implements a 120 day review deadline for the Cabinet to approve or deny a regional facility plan.

- (5) **Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**
- (a) **Initially:** There are no additional costs to implement the amendments to this administrative regulation.
  - (b) **On a continuing basis:** There are no additional costs to implement the amendments to this administrative regulation.
- (6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?** This regulation is implemented and enforced using state general funds and federal funds provided by the Environmental Protection Agency through the Clean Water State Revolving Fund, Water Pollution Control Grant.
- (7) **Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** The amendments to this administrative regulation will not necessitate an increase in fees or funding.
- (8) **State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** This administrative regulation does not establish or increase fees.
- (9) **TIERING: Is tiering applied? (Explain why or why not)**  
Tiering is applied to this amendment. A regional planning agency that is experiencing low growth or no growth will not be required to submit a full regional facility plan every twenty years. Instead, a regional planning agency has the option to submit an asset inventory report every ten years, which will reduce the costs of complying with this administrative regulation.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 5:006

Contact Person: Sandy Gruzesky, Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?  
Yes   X   No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
Regional planning agencies, including city and county governments that have the overall responsibility for regional facility planning process within their designated planning boundaries.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 33 U.S.C. 1288, 1313, 40 C.F.R. 130, KRS 224.10-100, 224.70-100, 224.70-110
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue in the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.
  - (c) How much will it cost to administer this program for the first year? The Cabinet does not anticipate any additional costs to administer this program as a result of the proposed amendments to this administrative regulation.
  - (d) How much will it cost to administer this program for subsequent years? The Cabinet does not anticipate any additional costs to administer this program as a result of the proposed amendments to this administrative regulation.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 5:006

Contact Person: Sandy Gruzesky, Director

**1. Federal statute or regulation constituting the federal mandate.**

33 U.S.C. 1288, 1313, 40 C.F.R. 130

**2. State compliance standards.**

KRS 224.10-100, 224.70-100, 224.70-110

**3. Minimum or uniform standards contained in the federal mandate.**

33 U.S.C. 1313 requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and single representative organizations within each area to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals.

**4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?**

This regulation does not impose stricter requirements than those established in the federal mandate.

**5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.**

**DETAILED SUMMARY OF MATERIAL  
INCORPORATED BY REFERENCE  
IN 401 KAR 5:006**

The following materials are incorporated by reference in 401 KAR 5:006:

- I. This administrative regulation incorporates by reference “Regional Facility Plan Guidance,” February 2011. This guidance provides recommendations to regional planning agencies to help meet the requirements of the regulation. The guidance is 27 pages.
- II. This administrative regulation incorporates by reference “Asset Inventory Report Form,” February 2011. The Asset Inventory Report Form provides a standardized and formatted form for regional planning agencies to develop an asset inventory, assess asset condition and failure modes, evaluate renewal strategies, prioritize projects, and develop a funding plan. The Asset Inventory Report Form is 21 pages.